THE HON'BLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO.17396 OF 2005

12th DAY OF AUGUST, 2005

Between:

M/s GNG Exports, Suit No.202,

2nd Floor, 7/1, Lord Sinha Road,

Kolkata – 700 071

Petitioner

A n d :

The Union of India rep. by its General Manager,

East Coast Railway, Bhubaneswar and others.

Respondents

THE HON'BLE SRI JUSTICE GODA RAGHRAM

WRIT PETITION NO. 17396 OF 2005

ORAL ORDER:

Heard learned counsel for the petitioner Mr. Prabhakar and Mr. R.S. Murthy, learned Standing Counsel for the respondents.

The petitioner is aggrieved by the alleged action of the respondents in withholding the consignment pertaining to RR Nos. 491251 And 491252 at Visakhapatnam New Goods Complex (VNCW) in respect of the iron ore booked by the petitioner from Tornagullu (TNGL) in Karnataka. The petitioner claims to be an exporter of iron ore and in the process of its business had booked and loaded two rakes i.e., 339352/53 and 339354/55 on 14.4.2995 and 16.4.2005 from TNGL to Samalkot, which was again rebooked from Samalkot to VNCW. The Chief Goods Supervisor, Samalkot, appears to have addressed a leter dated 11.5.2005 to the Chief Goods Supervisor, Visakhapatnam, alleging that on weighment at Guntakal, excess tonnage was found in the rakes booked by the petitioner. The Chief Goods Supervisor, Visakhapatnam, addressed a letter dated 12.7.2005 to the consignee viz., M/s Pratyusha Associates, raising punitive charges in respect of the consignment covered by four RR Nos. 491152 to 491155. The punitive charges assessed are in an amount of Rs.31,16,981/- and the consignee has been called upon to pay the said amount, failing which the next transaction would be stopped.

On coming to know of this communication to the consignee, the petitioner on 16.7.2005 addressed the General Manager, SCR, nor to insist on payment of the punitive charges. There was some subsequent correspondence. While so, the petitioner booked another consignment under RR Nos. 449603 and 449604 from Bellary to Samlakot, which was again rebooked to VNCW under RR Nos. 491251 and 491252. This consignment on reaching Visakhapatnam, was impounded by the Railway authorities on account of the non payment of the amount of Rs.31,16,981/- determined as punitive charges in respect of the 4 RRs and two rakes referred to earlier, which were booked by the petitioner to M/s Pratyusha Associates on 14.4.2005 and 16.4.2005.

The petitioner states, responding to a query from the Court as to the maintainability of the writ petition, that the contract between the petitioner and the Railways is per se a non-statutory contract, yet the determination of the rates of punitive charges for over weighment and the liabilities and obligations of the respective parties and the reciprocal obligations are partly covered in a statutory context and statutory rules and therefore there are statutory underpinnings on some aspects of the contract. Even so this case bristles with existing and potential factual disputes on all relevant aspects and is appropriately determined either by a civil court of competent jurisdiction or by a statutory Tribunal, if there be one, having jurisdiction and

authority over the subject matter of the dispute between the parties. It is stated by the learned counsel for the petitioner that against the claim of the respondents for punitive damages set out in the notice dated 12.7.2005 addressed to the consignee – M/s Pratyusha Associates, either M/s Prathusha Associates or the petitioner as a consignor have a remedy before the Railway Claims Tribunal. The choice of the appropriate forum is a forensic area to be explored by the litigants and this court need not say anything further in the matter. If there is no statutory tribunal, the remedy is always before the civil court of competent jurisdiction.

According to the petitioner as the goods consigned on 16.4.2005 under RR No.s 49114 and 49115 (enrooted from Samalkot to VNCW under these RRs) have not been carried by the Railways beyond Bethamcherla, the respondent-Railways was not acting fairly in computing the punitive charges as though goods were carried throughout the whole distance with the excess weighment causing potential damage to the tracks over the entire distance. The Railways as a State is required to act fairly and assess the punitive damages having regard to the actual impact of the overloading and could have computed punitive charges/damages only according to the fact that the petitioner's overloaded goods were carried only for a part of the distance. These too are areas regarding the scope of interference with the spectrum of discretion of the Railway authorities on the assessment of the quantum of damages or punitive charges liable to be levied under the legal architecture in operation and are more properly determined by the forum before which the *lis* is presented for adjudication.

The immediate grievance of the petitioner is however as regards the impounding of the subsequent consignment covered by RR Nos. 491251 and 491252 consigned from Samalkot to VNCW on 23.4.2005 after initial loading at TNGL on 19.4.2005. This consignment is also addressed to M/s Pratyusha Associates and therefore according to the petitioner, the petitioner as well as M/s Pratyusha Associates would be liable jointly and severally to bear the consequences of over weighment of the earlier consignment by the petitioner on 14.4.2005 and 16.4.2005, resultantly both the petitioner and M/s Pratyusha Associates would also be liable to be subjected to the consequences of impoundment of the later consignment. The difficulty and hardship expressed by the petitioner however is one of immediancy. An iron ore consignment is held up by the impoundment by the respondents at Visakhapatnam and they demanded an amount of Rs.31,16,981/- towards over weighment of the

previous consignment as a condition precedent for release of the present consignment.

In the facts and circumstances of the case, while relegating the petitioner to pursue the properly identified remedies before the appropriate from in respect of the disputes that the petitioner has with regard to the punitive charges demanded in the Chief Goods Supervisor, VNCW, by the proceedings dated 12.7.2005 addressed to M/s Pratyusha Associates, this court considered it appropriate to direct the respondents to release the consignment covered by RR Nos. 491251 and 491252 in favour of M/s Pratyusha Associates on a bank guarantee being furnished by or on behalf of M/s Pratyusha Associates favouring the 5th respondent herein for an amount of Rs.16,00,000/- constituting approximately 50% of the amount of punitive charges set out in the Chief Goods Supervisor's proceedings dated 12.7.2005.

Mr. R.S. Murthy, learned Standing Counsel for the respondent-Railways, submits that the petitioner or M/s Pratyusha Associates may also jointly and severally be liable to pay the wharfage/demurrage charges for the retention of the consignment under RR Nos. 491251 and 491252 at VNCW and that by communication dated 27.7.2005 of the Chief Goods Superintendent, VNCW addressed to M/s Pratyusha Associates it has also been informed that this amounts to about Rs.8,39,460/- upto 27.7.2005 and would amount something more as on date.

This is not the issue we are concerned with in this writ petition. In addition to the bank guarantee as directed above, if there are any other charges payable, the same shall be cleared either by the petitioner or by M/s Pratyusha Associates, as the case may be, and nothing in this order shall be construed as obliging of the respondent-Railways to release the consignment except on payment of other legitimate charges due and payable to the Railways.

Apart from approaching the appropriate forum, the petitioner is also at liberty to make a representation to the respondents for negotiation/settlement of any extent or potential dispute regarding the lis presented in this writ petition and it is hoped that a sense of conciliation and mediation will prevail on the respective parties in resolving the disputes.

The writ petition is disposed of as above. No order as to costs.

Dated: 12.08.2005 ----------

Pvsn Justice G. Raghuram